ten a short time before to be put in to show that it had been his intention to do so. These letters might have been admitted as part of the *res gestæ;* but the opinion, by Mr. Justice Gray, proceeds on the broad ground that "whenever the intention is of itself a distinct and material fact in the chain of circumstances, it may be proved by contemporaneous, oral, or written declarations of the party."

Cases like this and *Commonwealth* v. *Trefethen* establish an exception to the Hearsay rule. There is a clear distinction between such statements as are here admitted, and involuntary cries or exclamations, whether of pain or pleasure, the admissibility of which has long been recognized. These are let in because they are involuntary, the direct effect of physical and mental conditions whose presence they indicate, as smoke indicates the presence of fire. It is true they can, like almost all natural effects, be produced by art so as to mislead; but this is so difficult, and so rarely done with success, that the possibility is ignored. When, however, words voluntarily spoken and fully subject to the will of the speaker are admitted, this reasoning ceases to apply, and we are dealing with what the Illinois court very justly calls "mere hearsay." The exception, if justifiable, is so on two grounds,—first, because the statements are so near to the mental fact which they are offered to prove that the objections to hearsay are reduced to a minimum; and second, because facts of this class are so difficult of proof by any other means that in the interests of justice it becomes necessary to let in the evidence.

A later Massachusetts case, *Viles* v. *City of Waltham*, 32 N. E. Rep. 901, suggests as a possible qualification of *Commonwealth* v. *Trefethen* that declarations by a party to the suit shall not be received in his favor "unless made under such circumstances as give them some corroboration, such corroboration being found, as a rule, in the fact that they accompany and explain acts which would themselves be competent evidence." Logically, this qualification is not necessary, for the objection to the statements as hearsay being done away with, and the modern practice allowing parties to testify in their own favor, it would seem that their declarations should be equally admissible with those of third parties. But to get a good working rule there is much to be said for the suggestion, the adoption of which would, by removing the danger of admitting statements made with a deliberate purpose to use them as evidence, greatly diminish any objection to the Massachusetts doctrine.

With or without qualification, the Massachusetts law seems better law than the Illinois, which is likely to work grave injustice in many cases, as it has perhaps done in *Siebert* v. *People*, where the accused was deprived of the means of proving what might in a doubtful case have appeared to the jury a material fact. These statements proved at least that the thought of suicide was present to the mind of the deceased shortly before his unexplained and violent death.

ERRATA.

SIR FREDERICK POLLOCK has made the following corrections of his article on "Contracts in Early English Law," vol. vi. HARVARD LAW REVIEW, page 393, line 18: *for* "buyer" *read* "seller;" *id.*, page 396, note 6, *for* "deviation" *read* "derivation."